

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

USGEN NEW ENGLAND, INC., a subsidiary
of NATIONAL ENERGY & GAS & GAS
TRANSMISSION, INC. f/k/a PG&E
NATIONAL ENERGY GROUP, INC.,

Plaintiff,

v.

BENTLY NEVADA, LLC f/k/a BENTLY
NEVADA CORPORATION, LLC; AND
BENTLY PRESSURIZED BEARING
COMPANY f/k/a BENTLY NEVADA
CORPORATION,

Defendants.

Civil Action No. 04 CV 12629 RWZ

PLAINTIFF'S MOTION FOR REMAND TO STATE COURT

Plaintiff, USGEN New England, Inc., a subsidiary of National Energy & Gas and Gas Transmission, Inc., f/k/a PG&E National Energy Group, Inc. ("USGEN"), hereby moves that this action be remanded to the state court from which it was removed. As grounds for this motion, plaintiff states:

1. USGEN filed Plaintiff's Original Complaint (the "Complaint") in Essex Superior Court on November 6, 2004. By way of the Complaint, USGEN seeks recovery for damages suffered as a result of defective product and/or services provided by the defendants. The Complaint was served on defendant Bently Pressurized Bearing Company on November 15, 2004, and on defendant Bently Nevada, LLC on November 18, 2004;

2. On or about December 15, 2004, defendants submitted a Notice of Removal to this Court. The defendants have failed to provide sufficient information to allow this Court to determine the citizenship of all parties to this action;

3. On or about December 16 and/or December 21, 2004, defendants effected removal of this action;

4. Removal on the basis of diversity jurisdiction is improper if the removing party does not clearly establish that complete diversity between and among the parties existed at the time of removal;

5. Remand is appropriate if the defendants fail to make the required showing of complete diversity; and

6. In any event, the petition for removal was untimely.

WHEREFORE, the removal of this case was improper, and the action should be remanded to the Superior Court Department of Essex County, Massachusetts, from which it was improvidently removed.

A memorandum in support of this motion it submitted herewith.

Dated: January 14, 2005

Respectfully submitted,

USGEN NEW ENGLAND, INC.

s/Kathleen A. Kelley

Kathleen A. Kelley

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CERTIFICATION OF CONSULTATION

Pursuant to Rule 7.1(A) of the Local Rules of this Court, I certify that I have conferred with opposing counsel in an attempt to narrow or resolve the issue presented by this motion but have been unable to do so.

s/Kathleen A. Kelley

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